July 1996

HONOR ROLL

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445th Session, Basic Law Enforcement Academy - March 12 through May 31, 1996

President:	Officer Donald K. Duncan - Mountlake Terrace Police Department
Best Overall:	Officer Kevin M. Wales - Tacoma Police Department
Best Academic:	Officer Steven P. Grossfeld - Kirkland Police Department
Best Firearms:	Officer Jason B. Mayse - Pasco Police Department

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Corrections Officer Academy - Class 231 - April 29 through May 24, 1996

Highest Overall:	Officer Daniel John Gaudette - Yakima County Corr./Deten. Center
Highest Academic:	Officer Franklin Joseph Clark - Pierce County Corrections Bureau
Highest Practical Test:	Officer Wayne Anthony Gagnon - Stevens County Jail
Highest in Mock Scenes:	Officer Daniel John Gaudette - Yakima County Corr./Deten. Center
Highest Defensive Tactics:	Officer Daniel John Gaudette - Yakima County Corr./Deten. Center

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Corrections Officer Academy - Class 232 - April 29 through May 24, 1996

Highest Overall:	Officer Brian Thomas Markert - Pierce County Corrections Bureau
Highest Academic:	Officer Brian Thomas Markert - Pierce County Corrections Bureau
Highest Practical Test:	Officer Samuel C. Honeycutt - McNeil Island Correctional Center
	Officer Katrina J. Jones - King County Dept. of Adult Detention
	Officer Michael A. Williams - Washington State Penitentiary
Highest in Mock Scenes:	Officer Ina A. McNeese - Twin Rivers Corrections Center
	Officer Gerald R. McTear - Washington State Reformatory
	Officer George Richeson - Yakima County Corr./Deten. Center
Highest Defensive Tactics:	Officer Brian Thomas Markert - Pierce County Corrections Bureau

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JULY LED TABLE OF CONTENTS

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1996 WASHINGTON LEGISLATIVE ENACTMENTS-- PART TWO

LED EDITOR'S INTRODUCTORY NOTE: This is Part Two of what we expect to be a three-part update of 1996 Washington State legislative enactments. Part One was provided in the June LED, and Part Three (including a cumulative index and additional information about enactments addressed in Parts One and Two) will be provided in the August LED. As we pointed out last month, some of the text of our summaries has been adapted from the final bill reports prepared by legislative staff. We have tried to incorporate RCW references in our summaries, but where new sections or chapters are created, the State Code Reviser must assign appropriate code numbers, a process that likely will not be completed until early fall. As always, we remind our readers that any views that we express regarding the correct interpretation of legislation are solely our own and do not necessarily reflect the views of the Attorney General's Office or of the Criminal Justice Training Commission.

JUVENILE CHARGING STANDARDS

CHAPTER 9 (HB 2392)

Effective Date: June 6, 1996

Chapter 9.94A RCW currently contains non-binding guidelines for prosecutors to follow when prosecuting adult criminal cases. These statutory provisions set out standards regarding: (1) prosecutorial decisions to prosecute a case, (2) prosecutorial decisions not to prosecute a case, (3) the proper selection of charges or degree of charges, (4) police investigations, (5) plea dispositions, and (6) sentence recommendations. Under this 1996 enactment adding a new section to chapter 13.40 RCW, the same non-binding prosecutorial guidelines for adult criminal cases are placed in statute for juvenile offenses. Minor changes are made in the guidelines to reflect the different terminology used in the juvenile justice system.

VEHICLES REBUILT FROM SALVAGE

CHAPTER 26 (SSB 6271)

Effective Date: June 6, 1996

RCW 46.12.005's requirement that titles and registration certificates of rebuilt "salvage vehicles" be branded is expanded to include vehicles under six years of age. For such vehicles under six years of age, markings indicating a vehicle has been rebuilt need be applied to the driver's door latch pillar.

SPEED LIMITS ON HIGHWAYS

CHAPTER 52 (HB 2836)

Effective Date: June 6, 1996

Amends RCW 46.61.410 to allow DOT to set highway speed limits according to engineering and traffic studies.

FOOD STAMP CRIMES

CHAPTER 78 (HB 1302)

Effective Date: June 6, 1996

Amends RCW 9.91.140 relating to unlawful purchase or redemption of food coupons. The amendments provide that it is illegal to purchase "food stamps" as defined by the Federal Food Stamp Act or redeem "food stamps" in violation of the provisions of that act. Among other things, the 1996 amendments will facilitate prosecution of persons who purchase from undercover officers. Also, references to food "coupons" are replaced with references to food "stamps."

MOTOR VEHICLE SIZE AND LOAD LIMITS

CHAPTER 92 (HB 2687)

Effective Date: June 6, 1996

Amends RCW 46.44.105's penalty provisions relating to vehicle loads. The current additional fine of 3 cents per pound in excess of the legal weight is replaced with a graduated fine structure. The fine structure consists of a set dollar amount, plus an additional penalty of a certain number of cents per pound. The penalty, designed as a deterrent, dramatically rises as the amount of illegal weight increases:

- 1-4000 pounds overweight, no additional penalty, 3 cents per pound;
- 4,001-10,000 pounds overweight, $120 additional penalty, 12 cents per pound;
- 10,001-15,000 pounds overweight, $840 additional penalty, 16 cents per pound;
- 15,001-20,000 pounds overweight, $1,640 additional penalty, 20 cents per pound;
- Over 20,000 pounds overweight, $2,640 additional penalty, 30 cents per pound.

VEHICLE TIRE FACTORS-- MAXIMUM GROSS WEIGHTS -- FRUIT TRANSFER

CHAPTER 116 (HB 2459)

Effective Date: June 6, 1996

Under amendments to RCW 46.44.042, a straddle trailer used exclusively to transport fruit bins between the field, storage and processing is subject to the following tire requirements: (1) a trailer manufactured before January 1, 1996, that is equipped with single-tire axles or a single axle walking beam may continue to operate at 600 pounds per inch width of tire; and (2) a trailer manufactured after January 1, 1996, may carry 515 pounds per inch width of tire on a 16.5-inch wide tire.

CRIMINAL SENTENCING-- ASSAULTS AGAINST PREGNANT WOMEN

CHAPTER 121 (SHB 2075)

Effective Date: March 21, 1996

Amends RCW 9.94A.390 to add an additional aggravating factor to the list of aggravating factors upon which an exceptional sentence above the standard range may be imposed on an adult defendant convicted of a violent crime. That factor is that the defendant knew that the victim of the offense was pregnant.

JUVENILE OFFENDER RESTITUTION

CHAPTER 124 (SHB 2580)

Effective Date: June 6, 1996

Amends RCW 13.40.080 to expand restitution powers of the juvenile courts in certain diversion and non-diversion circumstances.

PRETRIAL RELEASE PROCEDURES

CHAPTER 181 (HB 1712)

Effective Date: June 6, 1996

Adds a new section to chapter 10.19 RCW to provide that a court that releases a defendant arrested for a violent offense on the defendant's personal recognizance, or on personal recognizance with conditions, must state on the record the reasons why the court did not require the defendant to post bail.

SENTENCING GUIDELINES COMMISSION AND JUVENILE SENTENCING

CHAPTER 232 (SB 6253)

Effective Dates: March 28, 1996; June 6, 1996; July 1, 1996

Under chapter 9.94A RCW, as amended by this 1996 act, the responsibilities of the Sentencing Guidelines Commission include evaluating the effectiveness of existing juvenile disposition standards and preparing biennial reports on state sentencing policy, racial disproportionality,

juvenile and adult corrections capacity, and recidivism. The Commission must recommend new juvenile disposition standards by December 1, 1996, and produce a preliminary report by July 1, 1997. The Sentencing Guidelines Commission takes over the responsibilities of the Juvenile Dispositions Standards Commission on July 1, 1996, and the Juvenile Dispositions Standards Commission ceases to exist on June 30, 1996. Other revisions to Sentencing Guidelines Commission laws are also made.

DOMESTIC VIOLENCE -- REVISITED

CHAPTER 248 (EHB 2472)

Effective Date: June 6, 1996

LED EDITOR'S NOTE: The June 1996 LED at 11-12 addressed this 1996 enactment amending various statutes relating to domestic violence. In the "penalties . . . for violating certain orders" portion of our summary (at page 12), we cited an incorrect section number; and in the "miscellaneous" portion of our summary (also at page 12), we could have been clearer in our description of law enforcement arrest authority as to protection orders. The following information from the Washington State Coalition Against Domestic Violence (authored by attorney Amy Stephson) accurately summarizes the 1996 changes under chapter 248 relating to increased penalties and enforcement of orders not in the computer:

> ***Enforcement of orders not in the computer*.** The bill makes it clear that under RCW 26.50.115, even if a protection order is not listed in the law enforcement computer system, a law enforcement officer may enforce the order if the officer is presented with an unexpired, certified copy of the order with proof of service. If the officer is presented with an appropriate order but it does not include proof of service, the officer must serve the order on the respondent if the respondent is present or make reasonable efforts to do so if the respondent is not present. The officer then must enforce prospective (future) compliance with the order. (Sec. 17)
>
> ***Increased penalty for violation of a no contact order*.** The bill amends RCW 10.99.050(2) to make it a gross misdemeanor (rather than just a misdemeanor) to willfully violate a no contact order that is issued following conviction of a crime. (Sec. 8) In 1995, this same increased penalty was imposed under RCW 10.99.040 for violations of no contact orders issued at arrest or arraignment.
>
> ***Increased penalty for repeated violations of orders*.** The bill amends RCW 10.99.040, 10.99.050, and 26.50.110 to make it a Class C felony to violate a no contact or protection order when the offender has at least two previous convictions for violating such orders. The previous orders can have been Washington orders or comparable out-of-state or federal orders. They can have involved either the same or a different victim. (Secs. 7, 8, and 16)

EXECUTION METHOD

CHAPTER 251 (SB 5500)

Effective Date: June 6, 1996

Amends RCW 10.95.180 relating to the method of execution for a person given the death penalty. The death penalty is now to be carried out by lethal injection, unless the defendant chooses hanging.

SINGLE-NAME IDENTIFIERS FOR OBTAINING CONTROLLED SUBSTANCES

CHAPTER 255 (HB 2623)

Effective Date; June 6, 1996

RCW 69.50.403 is amended to make it unlawful to obtain a controlled substance by giving more than one name to a practitioner, including a pharmacist. When a person's name is legally changed, the person is required to inform all providers so that medical and pharmacy records may be filed under a single name identifier.

LITTERING STATE PARKS-- COMMUNITY SERVICE REQUIREMENT

CHAPTER 263 (SBH 2757)

Effective Date: June 6, 1996

Among other things, this act amends RCW 70.93.060 to provide that a person that litters in a state park shall be ordered by the court to perform 24 hours of community service in the park where the litter violation occurred. Those state parks expressly designated by the Parks and Recreation Commission will participate in this program.

MANDATORY DOC REPORTING OF ABUSE OF CHILDREN, DEPENDENTS, DISABLED

CHAPTER 278 (SB 6672)

Effective Date: June 6, 1996

Amends RCW 26.44.030 to add certain Department of Corrections (DOC) personnel to the list of professionals who are required to report suspected instances of abuse or neglect of a child, adult dependent, or a developmentally disabled person. The DOC personnel who are made mandatory reporters include those who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. The mandatory reporting requirement applies only when, as a result of observations or information received in the course of their employment, DOC personnel have reasonable cause to believe abuse or neglect occurred.

MISDEMEANANT PROBATION PROGRAMS

CHAPTER 298 (SHB 2533)

Effective Date: June 6, 1996

Under a new section in chapter 9.95 RCW, the Department of Corrections is to assume the supervision of misdemeanants sentenced in superior court. When a superior court judge orders

supervision of a misdemeanant or gross misdemeanant, responsibility for the supervision falls initially on DOC. Counties, however, may elect to perform their own supervision of these offenders for a particular biennium. A county making this election will enter into a contract with DOC. Under such contracts, counties may receive funding from DOC that must be used in supervising these offenders. The amount of the funds will be determined according to a formula established by DOC.

Under a new section in chapter 9.95 RCW, any county that contracts with DOC to supervise superior court misdemeanants must establish and maintain classification and supervision standards that meet specified minimum requirements. A county's standards may not be less stringent than those required by DOC. The standards are to be met, and may be adjusted, within resources appropriated by the Legislature and supplemented by fee collections.

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WASHINGTON STATE SUPREME COURT

NO 9.73 PRIVACY ACT PROTECTION FOR STREET DRUG VENDORS

State v. Clark, 129 Wn.2d ___ (1996) [5/09/96 decision]

Facts (Brief summary):

Clark and fifteen other defendants in these consolidated cocaine delivery cases were separately arrested during Operation Hardfall, an undercover reverse sting operation conducted jointly by the FBI and the Seattle Police Department. All of the cocaine purchases in the reverse sting were made by informant Kevin Glass, who was wired in his conversations with Seattle street corner drug dealers.

The wire was authorized under a court order procured under RCW 9.73.090. Most of the brief conversations took place entirely on the street while Glass sat in a car, and many of the conversations took place in front of third persons on the street or sidewalk. A few of the conversations took place after the cocaine dealers had gotten into Glass' vehicle following Glass' initial contact of the street cocaine dealers.

Proceedings:

Each of the 16 defendants was charged with cocaine delivery, each lost a motion in the trial court to suppress the tape recordings, and each was convicted as charged. The Court of Appeals affirmed the trial court decisions. See State v. D.J.W., 76 Wn. App. 135 (Div. I, 1994) **Jan. '95 LED: 02**.

ISSUES AND RULINGS: (1) Were the conversations with the cocaine dealers on the street "private" for purposes of chapter 9.73 RCW, the Privacy Act? (ANSWER: No); (2) Were the conversations with the cocaine dealers who got into Glass's car after he contacted them on the street "private" for purposes of chapter 9.73 RCW? (ANSWER: No--note that there is a separate concurring & dissenting opinion in this case, signed by four State Supreme Court justices who are of the opinion that the conversations that took place in the car should have been held to be private.) Result: King County Superior Court convictions of all sixteen defendants affirmed.

ANALYSIS BY MAJORITY ON "PRIVATE CONVERSATIONS" ISSUE:

> **[LED EDITOR'S INTRODUCTORY NOTE: Having determined that none of the tape-recorded conversations were "private" under chapter 9.73 RCW, and therefore that the restrictions of that statute did not apply, the majority opinion does not address the legality of the court orders pre-authorizing the recordings in this case. The dissenting justices, who would have determined the conversations taking place in informant Glass's car to be private, assert that the pre-recording court authorizations did not satisfy the statute, based in part on their belief that probable cause was lacking.]**

The majority opinion first notes that there is no federal or state constitutional limit on one-party consent recording of conversations. Then, turning to chapter 9.73 RCW, the Privacy Act, the majority notes that the state statute generally requires either court authorization (RCW 9.73.090--felony investigation) or supervisor authorization (RCW 9.73.230--felony drug-dealing investigation) to tape record or intercept "private" conversations. Thus, the threshold issue under 9.73 is whether conversations are "private."

The statute does not define "private," the Clark majority notes. Past cases holding conversations to be **not** private are discussed by the majority. Those cases include: Kadoranian v. Bellingham P.D., 119 178 (1992) **Aug. '92 LED:06** (not private conversation where person answers phone call by stranger, briefly informs stranger that a resident of the person's home is not present, and takes a message); State v. Goucher, 124 Wn.2d 778 (1994) **Dec. '94 LED:14** (conversation not private where, during search warrant execution, police answer phone and take a drug purchase order from the caller who wishes to purchase drugs); State v. Flora, 68 Wn. App. 802 (1992) **July '93 LED:17** (police officers talking to a citizen on a public street in the presence of other citizens cannot claim privacy under chapter 9.73); State v. Bonilla, 23 Wn. App. 869 (Div. II, 1979) **Nov. '79 LED:04** (no privacy where murderer called police to admit his involvement in the murder); State v. Slemmer, 48 Wn. App. 48 (Div. I, 1987) **Oct. '87 LED: 14** (no privacy where an investment advisor met in a public meeting with members of an investment group and discussed matters which were being taken down in minutes and were subject to open outside disclosure).

Taking the above cases, and the statute as a whole, the majority opinion in Clark asserts that the following nonexclusive factors must be considered, on the totality of the circumstances and on a case-by-case basis, to determine whether a conversation is private under chapter 9.73: (1) The subjective intentions of the participants; (2) The duration and the subject matter of the conversations; (3) The location of the conversations and the presence (or possible presence) of third persons; (4) The actions of the nonconsenting party; (5) The relationship of the nonconsenting party to the consenting party.

Applying the cases and the above factors to the conversations which took place on the street between informant Glass and the cocaine dealers, the majority declares in pertinent part:

> Looking in a general way at the sixteen conversations in these consolidated cases, the duration and location of the conversations, the presence or absence of third parties, the subject matter of the conversations, and the defendants' relationship to Glass are factors in determining the conversations here were not private. Glass was a complete stranger to the defendants. The defendants' conversations with

him were essentially the same conversations that the defendants might have had with a great many other strangers who approached asking for cocaine. In dealing with Glass, the defendants clearly had no concern for who he was, other than to assure themselves on some occasions that he was not the police. They dealt with him as they would have dealt with anyone else on the street in conducting their business with the public. The conversations here were not private because they were routine conversations between strangers on the street concerning routine illegal drug sales.

Defendants emphasize they would not have had the same incriminating conversations with persons they knew to be working for the police. They argue that this means we must conclude their conversations with Glass were private. They contend that one can have a private conversation with large numbers of other people, as long as one class of listeners, such as police, is not intended to hear the conversation. We reject this analysis. One cannot intend or reasonably expect a conversation, the gist of which is repeated with large numbers of strangers, to be private. The relevant time for assessing the defendants' intent and reasonable expectations is at the time of the conversation, not at the time of their arrest and prosecution. When they were talking with Glass, the defendants clearly would have not withheld the same information from any other prospective purchaser. Such routine street-level or retail sales conversations are not private.

Moreover, the conversations often took place in front of other persons, or with other dealers wrestling for business in a marketplace atmosphere. In fact, ten of the defendants' conversations with Glass took place in front of a third party. We believe that the presence of one or more third parties in these cases, regardless of whether the defendant and third party were in the car, means that the conversations were not private in any ordinary or usual meaning of that word.

Two other conversations were not in front of third parties, but the defendants stood in a public street during their entire encounter with Glass. They were in plain view and potentially within sight or hearing of anyone who might have passed by. The nature of their interaction with Glass would have indicated to any resident of a high drug trafficking area what was transpiring. These conversations were not private.

The remaining four defendants did not speak in front of a third party or entirely while standing in a public street. However, they initiated their sales conversations with Glass in the street, agreeing to provide him with cocaine, and then moved into the car to carry out the transaction. Although holding a conversation behind closed doors may tend to make it private in the usual case, these four conversations were not usual. They involved conversations between the defendants and a stranger, and merely consummated a deal arranged while defendants were in plain view on a public street. . . . To any passerby in a high drug trafficking area, the activity of the four defendants who initiated an exchange on the street and carried it out in Glass' car was perfectly transparent.

Further, the ordinary person does not reasonably expect privacy in a stranger's car. Privacy is a concept that entails the notion that certain matters should not be the subject of "prying or intrusion." To record a conversation behind a closed door usually would entail prying or intrusion into a person's home, workplace,

> automobile or other private zone. but these four defendants entered a stranger's car. If a person may not reasonably expect privacy when dealing with the public in his own home, that person must expect even less privacy when dealing with the public on the streets and in the cars of strangers.
>
> In sum, we find that none of these conversations was private. Each was a brief and routine sales conversation, just like any other, conducted or initiated on the street with a stranger. Each could not have been reasonably intended or expected to be private, secret, or confidential under the circumstances of Operation Hardfall.
>
> **We emphasize that our ruling is limited to these sixteen conversations where the defendants approached a stranger for brief, routine conversations on the street about drug sales. We are not suggesting or deciding that conversation is not private solely because it takes place on a street or solely because it relates to a commercial or illegal transaction. Clearly, there are many commercial and/or illegal transactions that may involve private conversations. These conversations may involve relationships and transactions wholly unlike the anonymous and spontaneous street-level transactions here. We also make no suggestion in this opinion that law enforcement officials should electronically intercept or record *private* conversations without complying with the requirements in the Privacy Act. Whenever a suspect is known in advance of recording, law enforcement officials should not find it difficult to obtain the requisite authorization under RCW 9.73.**

[Some text, citations, footnotes omitted; bold-print emphasis added by LED Ed.]

CONCURRING & DISSENTING OPINION:

As noted above, four justices join in an opinion concurring in the majority's determination that the street conversations were private, but asserting that the conversations that took place in Glass' car should have been held to be private. The concurrence/dissent also addresses an issue not addressed in the majority opinion-- the legality of the superior court order under 9.73.090 pre-authorizing the recordings. As noted above, the dissenters' opinion asserts that probable cause was not met by the authorization request to the superior court, and that the dissenters would have invalidated the authorization.

LED EDITOR'S COMMENT:

The Clark decision is good news for law enforcement, but probably only in terms of providing a fall-back argument where a law enforcement agency has attempted to meet the pre-authorization requirements of chapter 9.73 RCW. The majority's opinion is very fact-specific and does not provide justification for dispensing in the investigative context with either: (1) supervisor authorization under 9.73.230, or (2) court authorization under 9.73.090.

Furthermore, we continue to be of the view that even most non-investigative street contacts by police should still be assumed by police to involve "private" conversations for purposes of the single-party consent requirements of the statute. Accordingly, unless

otherwise advised by their prosecutors or legal advisors, officers wishing to tape record their conversations with citizens in field contacts or traffic stops probably still need to obtain consent by complying with RCW 9.73.030(3) which declares that:

> **Where consent by all parties is needed pursuant to this chapter, consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted: PROVIDED, That if the conversation is to be recorded that said announcement shall also be recorded.**

Note also that this case does not in any way relax the strict requirements under RCW 9.73.090 for tape recording interrogations of arrestees.

SEARCH WARRANT NEEDED TO AUTHORIZE DELAYED INVESTIGATIVE SEARCH OF VEHICLE SEIZED UNDER DRUG FORFEITURE LAW; ALSO, WORK RELEASE SEARCH CONDITIONS EXPIRE AT SOME POINT AFTER WORK RELEASEE ARRESTED FOR NEW CRIME

State v. Hendrickson, 129 Wn.2d ___(1996) [5/09/96 decision]

Facts: (Brief summary)

While in work release status for a prior VUSCA conviction, Michael W. Hendrickson was arrested by members of the Wahkiakum-Cowlitz Narcotics Task Force on probable cause for delivery of cocaine. Hendrickson had brought the cocaine to the Wahkiakum County jail facility and attempted to deliver the cocaine to a jail inmate who had previously reported the pending deal to the task force.

At the time of Hendrickson's arrest, the pickup truck which he had driven to the facility was impounded, inventoried, locked, and parked in the jail facility parking lot. No contraband had been found in the inventory search by the arresting officers. Hendrickson was told at the time of his arrest that the task force intended to seek forfeiture of his truck because he had used it to deliver the cocaine to the facility. Also on the day of his arrest, Hendrickson was transported to the Cowlitz County jail.

Several days after the arrest, members of the task force received a tip from an allegedly reliable source that Hendrickson had a stash of cocaine in a speaker vent of his truck. The officers went back to the truck, which was still parked in the jail parking lot. They searched the truck without a warrant and found one-half ounce of cocaine hidden in a speaker vent. The following day, the task force provided written notice to Hendrickson that the truck was subject to the forfeiture provisions of RCW 69.50.505.

Proceedings:

Hendrickson was charged with (1) delivery of cocaine in a jail facility, and (2) possessing cocaine with intent to deliver. He lost a pre-trial motion to suppress the cocaine which had been seized from his truck four days after his arrest, and he was convicted of both charges. The Court of Appeals, in an unpublished opinion, affirmed the trial court decision.

ISSUES AND RULINGS: (1) Was the search of Hendrickson's truck justified by the terms of his work release agreement permitting search of any vehicle he used to go to and from work and the jail? (ANSWER: No); (2) Was the search of the truck justified by the fact that the vehicle had been seized pursuant to the vehicle forfeiture provisions of RCW 69.50.505? (ANSWER: No) Result: Reversal of Wahkiakum County Superior Court cocaine possession conviction; affirmance of conviction and exceptional sentence for delivery in a county jail under RCW 9.94A.310(5).

ANALYSIS:

(1) WORK RELEASE PROVISIONS

The Supreme Court summarily rejects the State's argument that the search was justified by the work release terms. The Court concludes that once Hendrickson was arrested for delivering cocaine and transported to the Cowlitz County jail, he was no longer in work release. Accordingly, the search of his truck four days later was not covered by the work release provisions.

(2) DRUG FORFEITURE LAW

The Supreme Court acknowledges that almost all federal courts which have addressed the issue as a matter of federal constitutional law under the Fourth Amendment have concluded that the mere fact that a vehicle has been lawfully seized under vehicle seizure laws justifies a delayed warrantless search of the vehicle with no apparent restriction on the scope of the search. However, the Court declares that the Washington constitution, article 1, section 7, is more restrictive on law enforcement searches of vehicles in this context.

The Court first criticizes the federal court decisions on this issue by pointing out that those cases rely on an older U.S. Supreme Court decision that (1) determined such a search to be reasonable in a general sense but (2) did not identify an applicable recognized exception to the warrant requirement . The Hendrickson Court points out that subsequent decisions of the U.S. Supreme Court have allowed warrantless searches only where a specific recognized exception is clearly applicable. The Hendrickson Court then continues its analysis under the Washington constitution as follows:

> The notion that property once seized under RCW 69.50.505 “can be considered the government’s own property” is wrong. The civil forfeiture statute prescribes a detailed process, involving notice and the opportunity to be heard, before the seized property may be declared forfeited. The seizure is simply the first step in the process. Until the trier of fact actually enters a judgment of forfeiture of the seized property at the conclusion of an evidentiary hearing, *the title to that property resides in the person from whom the property was seized.* In fact, under Washington’s civil forfeiture law, the rights of innocent parties in the chain of title are expressly protected. *See* RCW 69.50.505(a)(7); RCW 69.50.505(d)-(e).
>
> Some federal courts have held that where police have probable cause to believe a car is subject to forfeiture, or have validly seized a car for forfeiture, the police may search the car without a warrant. ... [Multiple federal court citations omitted by LED Ed.]

Regardless, we decline to adopt the view of the cited federal courts, as art.I,§7 requires a more restrictive view of investigatory searches. We adopt the view expressed in *State v. Patterson,* 112 Wn.2d 731, (1989), **[Sept. '89 LED:15]** where we cited with approval the language of the Oregon Supreme Court in *State v. Kock,* 302 Or.29, 33, 725 P.2d 1285 (1986):

> We nevertheless hold that any search of an automobile that was parked, immobile and unoccupied at the time the police first encountered it in connection with the investigation of a crime must be authorized by a warrant issued by a magistrate or, alternatively, the prosecution must demonstrate that exigent circumstances other than the potential mobility of the automobile exists.

In this case, the police informed Hendrickson of their intent to forfeit his truck on February 15, but they did not serve the necessary formal summons to forfeit the truck until February 20, the day *after* they searched it. The police conducted an inventory search on February 15 and discovered no contraband. They parked the truck in the jail parking lot. The police search on February 19 was investigative in nature. There were no exigent circumstances present here: there is no indication that the police were in "hot pursuit" or their investigation was in any fashion imperiled by obtaining a warrant.

Because the State has not carried its burden in overcoming the "per se unreasonable" presumption by demonstrating any of the narrow exceptions to a warrant applied to the search of Hendrickson's vehicle on February 19, we hold the search was unconstitutional and that the trial court should have suppressed the evidence produced in that search.

[Some text and citations omitted]

LED EDITOR'S COMMENTS:

SEARCH CONSIDERATIONS IN THIS CONTEXT

The ruling in this case surprised us. Searching a vehicle for investigative purposes without a search warrant following its seizure for forfeiture apparently has been the accepted practice in this state and elsewhere, likely based on the federal case law on point. Thus, the Hendrickson task force members were reasonable in their conclusion that no warrant was necessary. Having said that, however, we have to admit that we find the Court's analysis on this issue to be fairly compelling. Warrantless search is not permitted in the absence of a recognized exception to the warrant requirement, and no recognized exception appears to be applicable in this context. Regardless, as an "independent grounds" reading of the Washington constitution, Hendrickson is now the law in Washington, and we will use this case to look at some of the search and seizure issues presented to the officers at the moment of arrest in this factual context. At that point, the officers were faced with the following search issues, among others, in relation to legality of, and possible scope of, a search of the truck:

(1) *Search under a warrant?* We assume that probable cause could have been established

in light of: (1) Hendrickson's very recent usage of the truck to transport cocaine, (2) Hendrickson's prior drug conviction, and (3) the informant's report. Thus, a warrant could have been obtained which would have authorized a thorough search of the vehicle. In hindsight, a warrant should have been sought authorizing a search of all areas of the vehicle in which controlled substances might be found.

(2) *Warrantless search under terms of work release?* It appears that the Hendrickson Court would not have overturned a search of the truck based on the work release terms, if the search had occurred immediately following Hendrickson's arrest. Such a search could be very thorough in its scope, we believe.

(3) *Impound-inventory "search"?* There could be no question that the truck was lawfully impounded and inventoried (no contraband was found in the initial inventory) when the task force members seized it on probable cause for possible forfeiture under RCW 69.50.505 immediately following Hendrickson's arrest. The permissible scope of an inventory following a lawful impound is limited, based on both the police agency's reasonable routine practices in conducting inventories and the recognized noninvestigative purposes of inventories. Those recognized purposes are: (a) protection of the police and others from false claims of loss, (b) protection of the owner and others with an interest in items in the vehicle from loss, and (c) protection of the public from possible dangerous items (e.g. firearms) which may be in the vehicle.

There is currently great uncertainty in Washington as to whether police may follow a routine practice of inventorying the contents of a locked trunk and of inventorying the contents of closed containers following an impound. While the State Supreme Court barred routine checking of vehicle trunks and closed containers in the case of State v. Houser, 95 Wn.2d 143 (1980) April '81 LED:01, the Houser decision was grounded solely in the Fourth Amendment, and, in deciding appeals from courts in other states, the U.S. Supreme Court has since twice rejected Houser-type arguments for restrictive interpretations of the Fourth Amendment in relation to vehicle inventories. See Colorado v. Bertine, 479 U.S. 367 (1987) April '87 LED: 04, and Florida v. Wells, 495 U.S. 1 (1990) July '90 LED:02. Thus, Houser may have been implicitly overruled by Bertine and Wells. The latter two U.S. Supreme Court decisions appear to permit inventory inspection of the contents of vehicle trunks and of closed containers, so long as officers are following routine agency practices in inspecting these areas and items. This trunk-closed-container-inventory-scope-issue is currently pending before Division I of the Court of Appeals in the case of State v. Ronald White (No. 36558-4-I), a case out of Whatcom County argued to the Court of Appeals on May 9, 1996.

Having said all of the above, however, in light of the recognized accepted purposes of inventory, we do not think that a routine inventory would extend to looking in speaker vents. Accordingly, inspection of the speaker vent of a vehicle would probably not be justifiable under the impound-inventory exception.

(4) *Consent search?* No consent was requested here. If Hendrickson had consented to a search of his vehicle following his arrest, then a search could have been conducted, limited in scope only by the terms of the consent.

(5) *Search incident to arrest?* Hendrickson was not occupying his vehicle when he was

arrested, so the Stroud rule permitting a search of the passenger area of the vehicle (and unlocked containers and unlocked compartments in the passenger area, incident to arrest would not have applied even if the search had occurred shortly after his arrest. If the arrest had occurred while Hendrickson was occupying his vehicle, then this exception -- which permits search of the vehicle's passenger area and unlocked containers and compartments in that area contemporaneous with the arrest -- may arguably permit officers to look in a speaker vent in the vehicle passenger area, because it could be argued to be an unlocked compartment in the passenger area of the vehicle. The issue here would turn of how readily accessible the compartment was. We lack the technical knowledge about speaker vents to opine generally as to this issue. We know of no case law on point.

(6) *Exigent circumstances?* There were no exigent circumstances in this case, so this exception to the warrant requirement could not have applied. See State v. Ringer, 100 Wn.2d 686 (1983) Feb. '84 LED:01 ("Carroll Doctrine" allowing probable cause searches of mobile vehicles not applicable under Washington constitution).

WARRANTLESS ARREST FROM PUBLIC TOILET DOES NOT VIOLATE PAYTON RULE

State v. White, 129 Wn.2d___ (1996) [5/09/96 decision]

Facts:

A Seattle Police officer who was part of a street drug enforcement team was directed to arrest a person that the team had probable cause to arrest for participating in the delivery of cocaine moments earlier. The officer had probable cause to believe that the described person, who turned out to be Gregory K. White, had gone inside Steve's Broiler, a restaurant. Inside the restaurant, the officer was informed by the restaurant manager that the suspect had gone into the men's restroom.

Entering the restroom, the officer observed one of the stalls. There the officer spotted under the closed door a pair of shoes and the bottom of a pair of pants matching those worn by his suspect. The officer then stepped closer to the stall and looked over the door where he saw White sitting on the toilet with his pants below his knees and currency lying on top of his underwear. The officer ordered White out of the stall "with your pants down." White was subsequently formally arrested after his role as a participant in the drug deal had been confirmed by a police officer eyewitness to the drug deal. A search incident to arrest yielded currency, a pager, and 2.9 grams of cocaine.

Proceedings:

After White's pre-trial motion to suppress the evidence was denied, he was convicted of possession of cocaine with intent to deliver. He unsuccessfully appealed to the Court of Appeals. See State v. White, 76 Wn. App. 801 (1995) **June '95 LED:09.**

ISSUE AND RULING: Does the "entry to arrest" restriction of Payton v. New York require that police obtain an arrest warrant before making an arrest of a person who is inside a public toilet stall? (ANSWER: No); Result: King County Superior Court conviction for possession of cocaine

with intent to deliver affirmed.

ANALYSIS:

The State Supreme Court bases its decision on the Fourth Amendment issue before it primarily on three United States Supreme Court decisions addressing the locations where officers may or may not make warrantless arrests. First, in U.S. v. Watson, 423 U.S. 411 (1976), the U.S. Supreme Court upheld a warrantless, probable cause arrest in a public place (i.e. a restaurant). Next, however, the U.S. Supreme Court decided Payton v. New York, 445 U.S. 573 (1980) **June '80 LED:01**, where the Court held that, in the absence of exigent circumstances, police may not force entry to make an arrest *in an arrestee's own residence* unless, at a minimum: (1) there is a valid arrest warrant for the person, and (2) there is reason to believe that the person is presently in the residence. Finally, in Steagald v. U.S., 451 U.S. 204 (1981) **May-Aug '81 LED:01**, the U.S. Supreme Court held that, in the absence of exigent circumstances, police may not force entry to make an arrest *in a third person's residence* unless police have a search warrant.

Putting defendant White's toilet stall arrest in context, the State Supreme Court holds that a public toilet stall is a public area no different from the restaurant food service area addressed in the Court's 1976 Watson decision. The State Supreme Court rules that a forcible warrantless arrest may be made on probable cause in a public toilet stall with no place-based restriction under Payton-Steagald. Accordingly, where, as here, police have prior probable cause to arrest a person known to be located in a public toilet stall, police may make a warrantless arrest of such person by either forcibly entering the toilet stall to make the arrest or by ordering the person out of the stall.

Defendant White had argued in his case that arresting him as he sat in a toilet stall violated his privacy rights. He based his argument on the Court of Appeals' decision in Tukwila v. Nalder, 53 Wn. App. 746 (1989) **Sept. '89 LED:17.** The Nalder decision overturned a "lewd conduct" conviction on grounds that a toilet stall user's privacy rights were violated when an officer making a random check looked over the top of a stall and observed Nalder masturbating in the toilet stall. However, the White Court points out, the Nalder decision held only that a toilet stall occupant has a right of privacy from *random police searches*. Nalder did not place any limitation on police *seizures* of persons in toilet stalls where such persons, as here, are subject to lawful seizure before the police approach the toilet stall.

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WASHINGTON STATE COURT OF APPEALS

TRIAL COURT SHOULD NOT HAVE DISMISSED DUI CASE FOR INSUFFICIENT EVIDENCE

State v. Wilhelm, 78 Wn. App. 188 (Div. II, 1995)

Facts and Proceedings: (Excerpted from Court of Appeals' opinion)

> Shannon Wilhelm was charged in District Court with Driving While Intoxicated (DWI) after an officer found him behind the wheel of a vehicle stopped on the inside shoulder of I-5. Wilhelm appeared intoxicated and smelled of alcohol. After he failed field sobriety tests, he refused a breath test. The District Court dismissed

the charges, reasoning the State could not establish a prima facie DWI case absent a breath test or evidence that Wilhelm's driving was affected. Because we cannot say as a matter of law the evidence is insufficient to show Wilhelm was driving under the influence, we reverse and remand.

Wilhelm was arrested and charged with DWI on May 17, 1992. . . . At a Knapstad hearing held the following day, the District Court dismissed the matter on the ground that the State failed to demonstrate a prima facie case.

On appeal from a stipulated record, the Superior Court affirmed the District Court dismissal. . . . the parties stipulated to the following facts:

1. That the defendant was cited for DWI, on May 17, 1992.
2. That a motion to dismiss was heard on July 15, 1992.
3. At the hearing it was stated to the Court that the State would prove that the trooper observed the defendant's vehicle was inside the shoulder of I-5. The defendant was behind the wheel. He told the trooper he pulled over because the car was overheated. There was a strong odor of intoxicants on the defendant's breath. His eyes were watery and blood shot. The officer had him perform field sobriety tests. He failed them. His coordination was unsteady and he was off balance. His speech was slurred. The breath test was refused.

4. The District Court dismissed the case. It's [sic] rationale was that there must be proof of what the actual driving was like. Because the officer did not actually see the driving, he was not in a position to determine what the driving was actually like and therefore, whether the driving was affected by what he had to drink.

The Superior Court [affirmed, entering its own findings of fact and conclusions of law].

ISSUE AND RULING: Was there sufficient evidence of DUI to pursue prosecution of Wilhelm? (ANSWER: Yes) Result: Thurston County District Court and Superior Court dismissal orders reversed; case remanded to District Court for trial.

ANALYSIS: (Excerpted from Court of Appeals' opinion)

At the time of Wilhelm's indictment, former RCW 46.61.502 (Laws of 1987, ch. 373, § 2) read in relevant part:

> A person is guilty of driving while under the influence of intoxicating liquor . . . if the person drives a vehicle within this state while:
>
> . . . . . .
>
> (3) The person is under the influence of or affected by intoxicating liquor. . ..

Elementally, under this statute the State must prove (1) Wilhelm (2) was driving a vehicle in this state (3) while intoxicated. We must determine whether any rational factfinder could find these essential elements beyond a reasonable doubt. That is, whether such a factfinder could form an abiding belief that Wilhelm was driving under the influence "after fully, fairly and carefully considering all the evidence or

lack of evidence."

We are mindful that two competent judges have already ruled these elements could not be satisfied. Nevertheless, we find sufficient circumstantial evidence of Wilhelm's driving. Wilhelm was found behind the wheel of a car stopped on the inside shoulder of I-5, not stopped on a quiet residential street or in a parking lot, and not standing outside the vehicle. A factfinder could reasonably infer Wilhelm drove to this location absent contrary evidence.

Strong circumstantial evidence also indicates Wilhelm was "intoxicated by liquor" when he refused the breath test. His eyes were watery and bloodshot; his breath smelled of alcohol; he failed a field sobriety test; his coordination was unsteady and he was off balance; and his speech was slurred. This evidence supports a reasonable inference of intoxication.

Thus, a reasonable factfinder could conclude Wilhelm was driving under the influence in these circumstances. The District and Superior Courts questioned whether Wilhelm's driving was affected by his intoxication. We held, however, that RCW 46.61.502 is violated if the evidence is sufficient for the factfinder to infer that the ability to handle an automobile was lessened in an appreciable degree by the consumption of intoxicants or drugs. We cannot say as a matter of law that the evidence here is insufficient and therefore we reverse and remand to the District Court.

[Some citations and footnotes omitted]

POST-VEHICULAR HOMICIDE BLOOD TEST WITHOUT ADVICE NOT ADMISSIBLE; ALSO, URINE SAMPLE NOT ADMISSIBLE IN EVIDENCE BECAUSE NO TOXICOLOGIST PROTOCOL

State v. Anderson, 80 Wn. App. 384 (Div. I, 1996)

Facts and Proceedings:

Following a fatal two-car accident, a WSP trooper went to a nearby hospital where Anderson, one of the drivers, had been taken for treatment. Witnesses at the accident scene had reported that Anderson had appeared to be intoxicated. What happened at the hospital is described by the Court of Appeals as follows:

When the trooper arrived at the hospital, Anderson was being treated for his injuries. Medical personnel asked the trooper to wait until tests and treatment were completed before contacting Anderson or telling him of the fate of his passengers. The officer was concerned this might take a considerable amount of time, so he explained the situation to a hospital nurse and requested that she draw blood from Anderson. Three vials of blood were taken by qualified personnel from Anderson. The nurse sealed the vials. [The trooper] marked them and put them in his shirt pocket. The trooper intended that one of the vials was to be provided to Anderson for independent testing. A short time later the trooper was allowed to see and talk to Anderson.

The trooper informed Anderson about his passengers and informed him that blood had been drawn from him, and that the trooper secured a separate vial of blood for Anderson's use. The trooper did not tell Anderson he had the right to additional testing of that blood by an independent laboratory of his choice. [COURT'S FOOTNOTE: In addition, the trooper read Anderson his Miranda rights . . . and formally arrested him for vehicular homicide.]

Later, [the trooper] requested that Anderson provide a urine sample to test for drugs. Anderson agreed. The drug screen of the urine came back negative for any drugs. Although not set out for the court, it is presumed that the test showed the presence of alcohol in Anderson's system.

Approximately an hour and a half later, the trooper spoke with Anderson's father at the hospital. The trooper testified that he gave the vial of blood to Anderson's father, as he told him Anderson had been arrested for vehicular homicide. He said he also told the father that he could take the vial to Gibb's Lab to have an analysis done. The trooper's report also stated that he advised Anderson's father as to what he knew and gave him the vial containing Roger's blood. He said he gave the father the name of a specific lab. The trooper said he wanted Anderson's father to maintain the blood for his son because he did not think Anderson was fully comprehending everything that was happening. But the trooper also testified that he believed Anderson comprehended the rights given him, that he did not demonstrate any confusion about the questions he was asked, and that the questions were answered appropriately. The trooper indicated only a slight problem in understanding Anderson's answers, because Anderson was wearing an oxygen mask. [The trooper] left the hospital and placed the blood and urine samples into evidence at the State Patrol office.

The State filed an information charging Anderson with three counts of vehicular homicide. CrR 3.5 and CrR 3.6 hearings were held. The trial court concluded that Anderson's statements were not made following a knowing and intelligent waiver of his rights and suppressed the "confession." The court did find both the blood and urine tests admissible.

ISSUES AND RULINGS: (1) Does the trooper's failure to advise Anderson of his right to additional and independent testing of his blood require suppression of the blood test results? (ANSWER: Yes); (2) Was the urine test admissible even though such tests have not been approved by the state toxicologist? (ANSWER: No) Result: reversal of Whatcom County Superior Court denial of Anderson's motion to suppress the blood and urine test result; case remanded for trial.

ANALYSIS: (Excerpted from Court of Appeals' opinion)

(1) BLOOD TEST

Supreme Court precedent requires that a person who submits to a blood test at the direction of the State be informed of his/her statutory right to an additional test by a qualified person of his or her own choosing. [State v. Turpin, 94 Wn.2d 820 (1980)]

Under Turpin, the appropriate remedy is exclusion.

> The State cannot be allowed to use evidence which the defendant is unable to rebut because she was not apprised of her right to independent testing. Evidence obtained unlawfully is excluded, and the taking of Ms. Turpin's blood without informing her of her right to seek alternative testing violated RCW 46.20.308(1). Exclusion is the appropriate remedy for violation of defendant's statutory rights.

Anderson should have been apprised of the right to independent testing, regardless of the fact that he lost the right to revoke his consent to testing by the State when he was arrested for vehicular homicide.

The trial court concluded the blood test was admissible because the trooper "substantially met" the legislative intent underlying the special evidence warning by arranging to take a blood sample for Anderson and giving it to his father an hour and a half later. The court found that the officer gave an appropriate explanation to a "close available family member." The State requests this court to forge a "substantial compliance rule" for the special evidence warning. We must decline to do so.

. . . [W]hile we sympathize with the trial court's desire to avoid the seemingly harsh result of applying Turpin, we do not believe that this record will support a conclusion of substantial compliance. Anderson was not comatose or unable to understand, yet *he* was not given the required warning. The trooper's own testimony was conflicting. On one hand, he said he did not think Anderson comprehended everything that was transpiring; but on the other hand, he did not refrain from questioning Anderson because, as he testified, he believed Anderson understood the Miranda rights, understood the waiver, understood the questions, and answered them appropriately. Thus, his failure to give Anderson the warning is not sufficiently explained.

The State argues that substantial compliance was achieved when the trooper told Anderson's father that he could take the vial of blood to "Gibb's Lab" and have an analysis performed. While the trial court took "judicial notice" of the fact that "Gibb's Lab" was an independent laboratory, no proof of the existence of "Gibb's Lab" was ever offered. This was not a proper subject for judicial notice under ER 201(b):

> A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

As pointed out in Anderson's reply brief, there is no listing for "Gibb's Lab" in any of the area's phone books. Nor does the record disclose that Anderson's father knew what the trooper meant when he specified "Gibb's Lab." Turpin requires the defendant be advised of the right to additional testing by a "qualified person of [his] own choosing," not that the defendant's father be advised to take the sample to a named lab without further explanation. The trial court erred in forging a substantial

compliance test on these facts. As a consequence of the trooper's failure to give the proper special evidence warning, the results of the blood test must be suppressed.

(2) URINE TEST

Anderson contends the trial court erred in concluding that alcohol is a drug, such that the officer's request for a voluntary urine sample for purposes of drug testing included testing for the presence of alcohol. Not only did the trial court find that alcohol was a drug, it concluded that the trooper's request for a urine sample, to be tested for "drugs," was sufficiently broad to logically include alcohol as a drug. The court also concluded that analysis of the urine for its alcohol content was within the scope of the request made by [the trooper], agreed to by Anderson.

Whether alcohol is a drug, and whether the request was sufficiently broad to include testing for alcohol in the urinalysis, is of no moment. WAC 448-14-010 specifically states, "Analysis of urine for estimation of blood alcohol concentrations is *not* approved by the state toxicologist in the state of Washington." (Court's emphasis.) Under RCW 46.61.506(3), the admissibility of information or test results must be as a result of a test approved by the state toxicologist. This avoids presumably unreliable tests being used against a defendant. Thus, the results of the urinalysis are not admissible for purposes of estimations of blood alcohol content, and the trial court's decision was in error if this test were to be allowed for that purpose.

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ATTORNEY GENERAL OPINION

TRANSFER OF SHERIFF'S PERSONNEL ON FORMING OF NEW CITY POLICE DEPARTMENT

In AGO 1996 No. 7, the Attorney General has issued an opinion interpreting RCW 35.13.360 through .400, the statute which allows sheriff's office employees to transfer employment to a city when a portion of the unincorporated area of a county is annexed or incorporated into a city. The AGO opines that this statute does not entitle sheriff's office employees to transfer to the police department of a city which: (1) incorporated prior to July 25, 1993; (2) then contracted with the county for law enforcement services for the next several years; and (3) then (subsequent to July 25, 1993) formed its own city police department.

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CORRECTION NOTICE RE DEATH BENEFIT LEGISLATION

The June 1996 LED at page 11 contains incorrect information about the death benefit legislation in chapter 226, Laws of 1996. The June LED was based on a summary of an earlier version of the legislation. The 1996 legislation which ultimately was adopted and signed into law does not apply to volunteer firefighters as indicated in the LED nor does it apply to State Fisheries and Wildlife Officers. Also, the legislation does not charge the Department of Retirement Systems with responsibility for writing rules to implement the legislation. The legislation also provides for a

study on providing a similar death benefit for volunteer fire fighters and reserve law enforcement officers. We will revisit this legislation in the August 1996 LED.

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NEXT MONTH

The August LED will include the third and final part of out 1996 legislative update, along with more entries on recent case decisions, including the June 10, 1996 decision of the United States Supreme Court in Whren v. U.S., W.L. ____ (June 10, 1996). Our preliminary reading of Whren is that the U.S. Supreme Court has virtually eliminated the "pretext stop" challenge to police stops, thus impliedly overruling the Fourth Amendment ruling of the Washington State Court of Appeals in State v. Chapin, 75 Wn. App. 460 (Div. I, 1994) **Dec. '94 LED:17**. (See also State v. Blumenthal, 78 Wn. App. 82 (Div. I, 1995) **Nov. '95 LED:13**.

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The Law Enforcement Digest is edited by Assistant Attorney General, John Wasberg, Office of the Attorney General. Editorial comment and analysis of statutes and court decisions express the thinking of the writer and do not necessarily reflect the opinion of the Office of the Attorney General or the Washington State Criminal Justice Training Commission. The LED is published as a research source only and does not purport to furnish legal advice.